

## REMARKS

In the Office Action of November 15, 2007, the Examiner maintained the rejection of claims 1-39. In response, Applicants provide the following remarks. Based on the following remarks, Applicants respectfully request reconsideration and allowance of the Application.

### Examiner's Interview

The undersigned representative engaged in a telephonic interview with Examiner Susan F. Rayyan on February 4, 2008. The Applicants and their representative extend their sincere thanks to the Examiner for her time during the aforementioned interview. The Applicants and their representative appreciate the guidance offered by the Examiner with respect to the present Application.

During the course of the February 4<sup>th</sup> interview, the discussion was focused on the cited portion of *Kano* and the lack of support in the cited portion towards claim elements. The Examiner suggested pursuing this line of argument in the present Response.

### Rejection Under 35 U.S.C. §103

In paragraph 3 of the Office Action, the Examiner rejected claims 1-39 under 35 U.S.C. §103(a) as being unpatentable over Cramer et al. (USPN 6,920,579, hereinafter *Cramer*), Washington (USPN 5,860,116, hereinafter *Washington*), and Kano (USPP 2003/0135650, hereinafter *Kano*). Applicants traverse.

Claim 1 recites in part "determining an optimal time to suspend file operations of the file service; and transferring the at least one memory page using the identification from the first storage filer to a second storage filer during the optimal time." Accordingly, the filer determines an optimal time to temporarily

stop the file operations of a CIFS service and stops the file operation at the optimal time according to exemplary embodiments. The filer may then transfer the memory page. (see [00117] and [00118]).

In paragraphs 2 and 3 of the Office Action, the Examiner states that while *Cramer* and *Washington* “do not explicitly teach determining an optimal time to suspend file operations of the file service,” *Kano* “teaches this limitation (at paragraph 69, as temporarily stopping file operations) to ensure consistency in the system.”

However, a close reading of this cited portion along with a review of corresponding FIG. 6 of *Kano* clearly indicate that *Kano* does not determine an optimal time to suspend file operations of the file server or transfer memory pages from a first storage filer to a second storage filer during the optimal time.

The cited portion of *Kano* is directed to creating a snapshot (i.e., copy) of the primary volume of the network attached storage (NAS) in a secondary volume of the NAS. As described, a logical volume management module checks the logical volume configuration information of the primary volume. After the volume configuration is checked, the file system module temporarily stops the file operation for files in the file system. A resynchronization process is then performed to create a copy of the primary volume in the secondary volume before resuming file operations. (see *Kano* [0069] and FIG. 6).

As such, *Kano* does not perform any determination of an optimal time to suspend file operations. Instead, file operations are automatically stopped upon completion of the volume confirmation check. Thus, the file operations may be stopped at any time so long as it is immediately following the volume confirmation check. This does not necessitate that the file operation stoppage is occurring at an optimal time.

Therefore, the combination of *Cramer*, *Washington*, and *Kano* does not provide every limitation of claim 1. As such, claim 1 is not obvious over the cited references. Furthermore, claims 2-9 depend from claim 1, and are therefore not obvious for at least the same reasons as claim 1.

Independent claims 10, 19, 20, 30, and 39 contain a similar limitation of determining an optimal time to suspend file operations of the file service, and transferring at least one memory page during the optimal time. As such, these claims are not obvious over the cited references for at least the same reasons as those of claim 1. Claims 11-18, 21-29, and 31-38 depend from independent claims 10, 20, and 30, respectively. For at least the same reasons as those of their independent base claims, claims 11-18, 21-29, and 31-38 are not obvious in view of the cited references.

Furthermore, there is no motivation to combine the cited references to obtain the limitations of the present claims. *Washington* is directed to information sharing in multi-processor, multi-main memory computer system whereby memory pages of frequently accessed data may be moved or copied to a requesting processor. As such, *Washington* teaches a single computer system comprising multiple processors which access data within memory pages. If the system in *Washington* shuts down, regardless of the use of memory pages between the two processors on the system, there is *no backup or "take over" of file services, and it is not a clustered environment*. The system in *Washington* simply shuts down. *Cramer* is directed to files services in an environment comprising *a cluster of file servers whereby one server may take over functions of another server*. Finally, *Kano* is directed to a backup system whereby content on primary and secondary volumes may be copied onto a backup server. The *backing up of the volumes in a backup server is in no*

*way related to file services in a clustered environment.* As such, one skilled in the art would not be motivated to combine *Washington*, *Cramer*, and *Kano* in order to obtain all elements of the claims since the cited references are clearly directed to different, unrelated functions.

The Examiner has made a conclusory statement that one would have been motivated at the time the invention was made to modify *Cramer* and *Washington* with determining an optimal time to suspend file operations of the file service to ensure consistency as described in the system of *Kano*. While a motivation in the prior art is an acceptable rational for supporting a prima facie case of obviousness, the Examiner has not articulated any reason why one would have been motivated by *Kano*. It has been held that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (In re Kahn, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in KSR) Thus, the Examiner has not articulated reasoning supporting a prima facie case of obviousness.

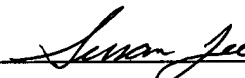
### CONCLUSION

Based on the foregoing remarks, Applicants believe the rejections to the claims have been overcome, and that the present Application is in condition for allowance. If the Examiner has any questions regarding the case, the Examiner is invited to contact Applicants' undersigned representative.

Respectfully submitted,

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